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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Federal Trade Commission,

10 Plaintiff,

11 v.

12 James D Noland, Jr., et al.,

13 Defendants.
14

No. CV-20-00047-PHX-DWL

SEALED ORDER

15 Plaintiff, the Federal Trade Commission, has filed a Complaint for Permanent
16 Injunction and Other Equitable Relief pursuant to Section 13(b) of the Federal Trade
17 Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and has moved for a temporary
18 restraining order (“TRO”), asset freeze, other equitable relief, and an order to show cause
19 why a preliminary injunction should not issue against individual defendants James D.
20 Noland, Jr. (“Jay Noland”), Lina Noland (“Lina Noland”), Scott A. Harris (“Harris”), and
21 Thomas G. Sacca, Jr. (“Sacca”) (collectively, the “Individual Defendants”) and corporate
22 entities Success by Media Holdings Inc. and Success by Media LLC (together, the
23 “Corporate Defendants” or “Success By Media”). (Doc. 3 [complaint]; Doc. 7 [motion for
24 TRO]; Doc. 8 [supporting memorandum].)

25 As explained below, although the Court generally agrees that the FTC has met its
26 burden of establishing an entitlement to a TRO, the Court declines to issue the writ *ne exeat*
27 *republica* sought by the FTC as to James Noland. The Court also finds that the FTC has
28 not made a specific showing necessary to justify all of the relief it seeks as Sacca. The

1 motion is otherwise granted.

2 FINDINGS OF FACT

3 The Court, having considered the Complaint, the *ex parte* Motion for TRO,
4 declarations, exhibits, and the memorandum filed in support thereof, and being otherwise
5 advised, finds that:

6 A. This Court has jurisdiction over the subject matter of this case, and there is
7 good cause to believe that it will have jurisdiction over all parties hereto and that venue in
8 this district is proper.

9 B. There is good cause to believe that Defendants have operated and promoted
10 a marketing scheme in which they are:

- 11 1. Operating as an illegal pyramid scheme;
- 12 2. Falsely representing that members of the Success By Health program
13 (called “Affiliates”) are likely to earn substantial income;
- 14 3. Providing the means and instrumentalities for the commission of
15 deceptive acts and practices by furnishing Affiliates with promotional
16 materials containing false and misleading representations to be used
17 in recruiting new participants;
- 18 4. Not providing consumers with required notices about their right to
19 cancel and obtain a refund, or providing consumers with such a refund
20 when requested, for certain sales; and
- 21 5. For products not shipped within 30 days from purchase, not providing
22 consumers a revised shipping date and the opportunity to cancel and
23 receive a refund, and not providing such refund when requested.

24 C. There is good cause to believe that Defendants have engaged in and are likely
25 to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);
26 the Mail, Internet, or Telephone Order Merchandise Rule (“Merchandise Rule”), 16 C.F.R.
27 Part 435; and the Rule Concerning Cooling-Off Period for Sales Made at Homes or at
28 Certain Other Locations (“Cooling-Off Rule”), 16 C.F.R. Part 429, and that Plaintiff is

1 therefore likely to prevail on the merits of this action. As demonstrated by detailed
2 evidence, including statements from consumers and Defendants' former Affiliates, sales
3 scripts, recruiting scripts and presentations, promotional videos, transcripts of Success By
4 Media events and conference calls, videos and recordings of Defendants, and expert
5 testimony, the FTC has established a likelihood of success in showing that Defendants have
6 operated an illegal pyramid scheme and made false, misleading, and deceptive
7 misrepresentations.

8 D. There is good cause to believe that immediate and irreparable harm will result
9 from Defendants' ongoing violations of the FTC Act, the Merchandise Rule, and the
10 Cooling-Off Rule unless Defendants are restrained and enjoined by order of this Court.

11 E. There is good cause to believe that immediate and irreparable damage to the
12 Court's ability to grant effective final relief for consumers – including monetary restitution,
13 rescission, disgorgement, or refunds – will likely occur from the sale, transfer, destruction
14 or other disposition or concealment by Defendants of their assets or records, unless
15 Defendants are immediately restrained and enjoined by order of this Court; and that, in
16 accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be
17 granted without prior notice to Defendants. Thus, there is good cause for relieving Plaintiff
18 of the duty to provide Defendants with prior notice of its Motion for a Temporary
19 Restraining Order.¹

20 F. Good cause exists for appointing a temporary receiver over the Receivership
21 Entities, freezing Defendants' assets, permitting the Plaintiff and the Receiver immediate

22 ¹ With that said, and as discussed during the hearing on January 9, 2020, the Court
23 has some concern about its authority to grant a TRO in this context without providing
24 notice to the restrained parties. The plain text of 15 U.S.C. § 53(b), under which the FTC
25 brings this action, states that a TRO may issue only “after notice to the defendant.” That
26 said, the Ninth Circuit has read two distinct provisos into the statute. *FTC v. Consumer*
27 *Defense, LLC*, 926 F.3d 1208, 1212 (9th Cir. 2019). Under the second proviso, which the
28 FTC utilizes here, the Ninth Circuit has stressed that district courts have the authority “to
grant any ancillary relief necessary to accomplish complete justice because [§ 53(b)] did
not limit that traditional equitable power.” *FTC v. H. N. Singer, Inc.* 668 F.2d 1107, 1113
(1982). Although *Singer* and *Consumer Defense* did not specifically address whether these
broad equitable powers include the ability to issue a no-notice TRO at the FTC's request—
and although the second proviso of § 53(b) only mentions preliminary injunctions, not
TROs—the Court acknowledges that many other district courts faced with this question
have granted the relief the FTC seeks.

1 access to the Defendants' business premises, and permitting the Plaintiff and the
2 Temporary Receiver to take expedited discovery.

3 G. Weighing the equities and considering Plaintiff's likelihood of ultimate
4 success on the merits, a temporary restraining order with an asset freeze, the appointment
5 of a temporary receiver, immediate access to business premises, expedited discovery, and
6 other equitable relief is in the public interest. That said, the evidence produced by the FTC
7 does not justify the extraordinary relief of a writ *ne exeat republica*.

8 H. This Court has authority to issue this Order pursuant to Section 13(b) of the
9 FTC Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the All Writs Act, 28
10 U.S.C. § 1651.

11 I. No security is required of any agency of the United States for issuance of a
12 temporary restraining order. Fed. R. Civ. P. 65(c).

13 DEFINITIONS

14 For the purpose of this Order, the following definitions shall apply:

15 A. **"Asset"** means any legal or equitable interest in, right to, or claim to, any
16 property, wherever located and by whomever held, whether tangible, intangible, digital, or
17 otherwise, including, but not limited to, digital currencies, virtual currencies, digital tokens,
18 and cryptocurrencies.

19 B. **"Corporate Defendants"** means Success By Media Holdings Inc. and
20 Success By Media LLC and each of their subsidiaries, affiliates, successors, and assigns.

21 C. **"Defendants"** means the Corporate Defendants, James D. Noland, Jr., Lina
22 Noland, Scott A. Harris, and Thomas G. Sacca, Jr., individually, collectively, or in any
23 combination.

24 D. **"Document"** is synonymous in meaning and equal in scope to the usage of
25 "document" and "electronically stored information" in Federal Rule of Civil Procedure
26 34(a) and includes writings, drawings, graphs, charts, photographs, sound and video
27 recordings, images, Internet sites, web pages, websites, electronic correspondence,
28 including e-mail and instant messages, contracts, accounting data, advertisements, FTP

1 Logs, Server Access Logs, books, written or printed records, handwritten notes, telephone
2 logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and
3 check registers, bank statements, appointment books, computer records, customer or sales
4 databases and any other electronically stored information, including Documents located on
5 remote servers or cloud computing systems, and other data or data compilations from
6 which information can be obtained directly or, if necessary, after translation into a
7 reasonably usable form. A draft or non-identical copy is a separate document within the
8 meaning of the term.

9 E. **“Electronic Data Host”** means any person or entity in the business of
10 storing, hosting, or otherwise maintaining electronically stored information. This includes,
11 but is not limited to, any entity hosting a website or server, and any entity providing “cloud
12 based” electronic storage.

13 F. **“Individual Defendant(s)”** means James D. Noland, Jr., Lina Noland, Scott
14 A. Harris, and Thomas G. Sacca, Jr., individually, collectively, or in any combination.

15 G. **“Marketing Program”** includes, but is not limited to, any multilevel,
16 affiliate, or network marketing program, business opportunity, pyramid marketing scheme,
17 Ponzi scheme, or chain marketing scheme.

18 H. **“Temporary Receiver”** means the temporary receiver appointed in Section
19 XV of this Order and any deputy receivers that shall be named by the temporary receiver.

20 I. **“Receivership Entities”** means Corporate Defendants as well as any other
21 entity that has conducted any business related to Defendants’ marketing of programs,
22 opportunities, or services offered by Success By Media, including receipt of Assets derived
23 from any activity that is the subject of the Complaint in this matter, and that the Temporary
24 Receiver determines is controlled or owned by any Defendant.

25 **ORDER**

26 **I. PROHIBITED BUSINESS ACTIVITIES**

27 **IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers, agents,
28 employees, and attorneys, and all other persons in active concert or participation with them,

1 who receive actual notice of this Order by personal service or otherwise, whether acting
2 directly or indirectly, in connection with the advertising, marketing, promoting, or offering
3 for sale of any Marketing Program, are temporarily restrained and enjoined from:

4 A. Engaging in, participating in, assisting others, or providing others with the
5 means and instrumentalities to engage or participate in, any Marketing Program that:

- 6 1. Pays compensation for recruiting new members;
- 7 2. Encourages or incentivizes members to purchase goods or services to
8 obtain or maintain eligibility for bonuses, rewards, or commissions
9 rather than for resale or personal use;
- 10 3. Induces others to encourage or incentivize members to purchase
11 goods or services to obtain or maintain eligibility for bonuses,
12 rewards, or commissions rather than for resale or personal use;
- 13 4. Pays any compensation related to the purchase or sale of goods or
14 services unless such compensation is for sales to or purchases by
15 persons who are not members of the Marketing Program and who
16 were not being recruited to become members of the Marketing
17 Program;
- 18 5. Fails to monitor and take all reasonable steps necessary to ensure that
19 any compensation paid is for sales to or purchases by persons who are
20 not members of the Marketing Program and who were not being
21 recruited to become members of the Marketing Program; or
- 22 6. Constitutes a pyramid scheme or chain marketing scheme.

23 B. Misrepresenting, or assisting others in misrepresenting, directly or indirectly,
24 expressly or by implication, any material fact, including, but not limited to, that consumers
25 who participate in a Marketing Program will receive or are likely to receive substantial
26 income, as well as any other fact material to consumers concerning any good or service,
27 such as: the total costs; any material restrictions, limitations, or conditions; or any material
28 aspect of its performance, efficacy, nature, or central characteristics.

1 C. For any sale for \$25 or more made at the residence of the buyer, or of \$130
2 or more for sales made at a location other than Defendants' place of business, failing (1) to
3 inform any consumer, orally and in writing in a bold, size 10-point font, of the consumer's
4 right to cancel the purchase without penalty within 3 business days and obtain a full refund;
5 and (2) failing to provide such refund within 10 business days of request.

6 D. Failing, with respect to any merchandise sold by Defendants by mail, via the
7 Internet, or by telephone that is not shipped within 30 days or within any other time that is
8 clearly and conspicuously displayed at the time of purchase, to offer the buyer the option
9 to cancel the order and receive a full refund or to consent to a delay; and failing to provide
10 consumers a refund when requested under those conditions.

11 **II. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

12 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
13 employees, and attorneys, and all other persons in active concert or participation with any
14 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
15 hereby temporarily restrained and enjoined from:

16 A. Selling, renting, leasing, transferring, or otherwise disclosing, the name,
17 address, birth date, telephone number, email address, credit card number, bank account
18 number, Social Security number, or other financial or identifying information of any person
19 that any Defendant obtained in connection with any activity that pertains to the subject
20 matter of this Order; and

21 B. Benefitting from or using the name, address, birth date, telephone number,
22 email address, credit card number, bank account number, Social Security number, or other
23 financial or identifying information of any person that any Defendant obtained in
24 connection with any activity that pertains to the subject matter of this Order.

25 Provided, however, that Defendants may disclose such identifying information to a
26 law enforcement agency, to their attorneys as required for their defense, as required by any
27 law, regulation, or court order, or in any filings, pleadings, or discovery in this action in
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1 the manner required by the Federal Rules of Civil Procedure and by any protective order
2 in the case.

3 **III. ASSET FREEZE**

4 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
5 employees, and attorneys, and all other persons in active concert or participation with any
6 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
7 hereby temporarily restrained and enjoined from:

8 A. Transferring, liquidating, converting, encumbering, pledging, loaning,
9 selling, concealing, dissipating, disbursing, assigning, relinquishing, spending,
10 withdrawing, granting a lien or security interest or other interest in, or otherwise disposing
11 of any Assets that are:

- 12 1. owned or controlled, directly or indirectly, by any Defendant;
- 13 2. held, in part or in whole, for the benefit of any Defendant;
- 14 3. in the actual or constructive possession of any Defendant; or
- 15 4. owned or controlled by, in the actual or constructive possession of, or
16 otherwise held for the benefit of, any corporation, partnership, asset
17 protection trust, or other entity that is directly or indirectly owned,
18 managed or controlled by any Defendant;

19 B. Opening or causing to be opened any safe deposit boxes, commercial mail
20 boxes, or storage facilities titled or leased in the name of any Defendant, or subject to
21 access by any Defendant, except as necessary to comply with written requests from the
22 Temporary Receiver acting pursuant to its authority under this Order;

23 C. Incurring charges or cash advances on any credit, debit, or ATM card issued
24 in the name, individually or jointly, of any Corporate Defendant or any corporation,
25 partnership, or other entity directly or indirectly owned, managed, or controlled by any
26 Defendant or of which any Defendant is an officer, director, member, or manager. This
27 includes any corporate bankcard or corporate credit card account for which any Defendant
28 is, or was on the date that this Order was signed, an authorized signor; or

1 D. Cashing any checks or depositing any money orders or cash received from
2 consumers, clients, or customers of any Defendant.

3 The Assets affected by this Section shall include: (1) all Assets of Defendants as of
4 the time this Order is entered; and (2) Assets obtained by Defendants after this Order is
5 entered if those Assets are derived from any activity that is the subject of the Complaint in
6 this matter or that is prohibited by this Order. This Section does not prohibit any transfers
7 to the Temporary Receiver or repatriation of foreign Assets specifically required by this
8 Order or expenditures by the Individual Defendants for minor, day-to-day living expenses.

9 **IV. DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

10 **IT IS FURTHER ORDERED** that any financial or brokerage institution,
11 Electronic Data Host, credit card processor, payment processor, merchant bank, acquiring
12 bank, independent sales organization, third party processor, payment gateway, insurance
13 company, business entity, or person who receives actual notice of this Order (by service or
14 otherwise) that:

15 (a) has held, controlled, or maintained custody, through an account or otherwise,
16 of any Document on behalf of any Defendant or any Asset that has been owned or
17 controlled, directly or indirectly, by any Defendant; held, in part or in whole, for the benefit
18 of any Defendant; in the actual or constructive possession of any Defendant; or owned or
19 controlled by, in the actual or constructive possession of, or otherwise held for the benefit
20 of, any corporation, partnership, asset protection trust, or other entity that is directly or
21 indirectly owned, managed or controlled by any Defendant;

22 (b) has held, controlled, or maintained custody, through an account or otherwise,
23 of any Document or Asset associated with credits, debits, or charges made on behalf of any
24 Defendant, including reserve funds held by payment processors, credit card processors,
25 merchant banks, acquiring banks, independent sales organizations, third party processors,
26 payment gateways, insurance companies, or other entities; or

27 (c) has extended credit to any Defendant, including through a credit card
28 account, shall:

1 A. Hold, preserve, and retain within its control and prohibit the withdrawal,
2 removal, alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation,
3 relinquishment, conversion, sale, or other disposal of any such Document or Asset, as well
4 as all Documents or other property related to such Assets, except by further order of this
5 Court; provided, however, that this provision does not prohibit an Individual Defendant
6 from incurring charges on a personal credit card established prior to entry of this Order, up
7 to the pre-existing credit limit;

8 B. Deny any person, except the Temporary Receiver, access to any safe deposit
9 box, commercial mail box, or storage facility that is titled in the name of any Defendant,
10 either individually or jointly, or otherwise subject to access by any Defendant;

11 C. Provide Plaintiff's counsel and the Temporary Receiver, within 3 days of
12 receiving a copy of this Order, a sworn statement setting forth, for each Asset or account
13 covered by this Section:

- 14 1. The identification number of each such account or Asset;
- 15 2. The balance of each such account, or a description of the nature and
16 value of each such Asset as of the close of business on the day on
17 which this Order is served, and, if the account or other Asset has been
18 closed or removed, the date closed or removed, the total funds
19 removed in order to close the account, and the name of the person or
20 entity to whom such account or other Asset was remitted; and
- 21 3. The identification of any safe deposit box, commercial mail box, or
22 storage facility that is either titled in the name, individually or jointly,
23 of any Defendant, or is otherwise subject to access by any Defendant;
24 and

25 D. Upon the request of Plaintiff's counsel or the Temporary Receiver, promptly
26 provide Plaintiff's counsel and the Temporary Receiver with copies of all records or other
27 Documents pertaining to any account covered by this Section or Asset, including originals
28 or copies of account applications, account statements, signature cards, checks, drafts,

1 deposit tickets, transfers to and from the accounts, including wire transfers and wire
2 transfer instructions, all other debit and credit instruments or slips, currency transaction
3 reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial
4 mail boxes, and storage facilities.

5 Provided, however, that this Section does not prohibit any transfers to the
6 Temporary Receiver or repatriation of foreign Assets specifically required by this order.

7 **V. FINANCIAL DISCLOSURES**

8 **IT IS FURTHER ORDERED** that the Corporate Defendants, James D. Noland,
9 Jr., Lina Noland, and Scott A. Harris, within 5 days of service of this Order, shall prepare
10 and deliver to Plaintiff's counsel and the Temporary Receiver:

11 A. completed financial statements on the forms attached to this Order as
12 **Attachment A** (Financial Statement of Individual Defendant) for each Individual
13 Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for each
14 Corporate Defendant; and

15 B. completed **Attachment C** (IRS Form 4506, Request for Copy of a Tax
16 Return) for each Individual and Corporate Defendant.²

17 **VI. FOREIGN ASSET REPATRIATION**

18 **IT IS FURTHER ORDERED** that within 5 days following the service of this
19 Order, the Corporate Defendants, James D. Noland, Jr., Lina Noland, and Scott A. Harris
20 shall:

21 A. Provide Plaintiff's counsel and the Temporary Receiver with a full
22 accounting, verified under oath and accurate as of the date of this Order, of all Assets,
23 Documents, and accounts outside of the United States which are: (1) titled in the name,
24 individually or jointly, of any Defendant; (2) held by any person or entity for the benefit of

25 ² The obligations in Sections V and VI do not apply to Thomas G. Sacca, Jr. Although
26 the FTC has provided evidence of the immediate need to identify further assets held by the
27 other Individual Defendants, the same showing has not been made as to Sacca. It is a
28 significant step to require an individual who has not been found guilty of any crime, not
been found liable for any civil wrongdoing, and not yet had a chance to be heard to disclose
his financial and tax history to the FTC. Thus, Sacca is not required to make the financial
disclosures discussed in Section V and VI at this early juncture of the case.

1 any Defendant or for the benefit of any corporation, partnership, asset protection trust, or
2 other entity that is directly or indirectly owned, managed or controlled by any Defendant;
3 or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

4 B. Take all steps necessary to provide Plaintiff's counsel and Temporary
5 Receiver access to all Documents and records that may be held by third parties located
6 outside of the territorial United States of America, including signing the Consent to Release
7 of Financial Records appended to this Order as **Attachment D**.

8 C. Transfer to the territory of the United States all Documents and Assets
9 located in foreign countries which are: (1) titled in the name, individually or jointly, of any
10 Defendant; (2) held by any person or entity for the benefit of any Defendant or for the
11 benefit of any corporation, partnership, asset protection trust, or other entity that is directly
12 or indirectly owned, managed or controlled by any Defendant; or (3) under the direct or
13 indirect control, whether jointly or singly, of any Defendant; and

14 D. The same business day as any repatriation, (1) notify the Temporary Receiver
15 and counsel for Plaintiff of the name and location of the financial institution or other entity
16 that is the recipient of such Documents or Assets; and (2) serve this Order on any such
17 financial institution or other entity.

18 **VII. NON-INTERFERENCE WITH REPATRIATION**

19 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
20 employees, and attorneys, and all other persons in active concert or participation with any
21 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
22 hereby temporarily restrained and enjoined from taking any action, directly or indirectly,
23 which may result in the encumbrance or dissipation of foreign Assets, or in the hindrance
24 of the repatriation required by this Order, including, but not limited to:

25 A. Sending any communication or engaging in any other act, directly or
26 indirectly, that results in a determination by a foreign trustee or other entity that a "duress"
27 event has occurred under the terms of a foreign trust agreement until such time that all
28 Defendants' Assets have been fully repatriated pursuant to this Order; or

1 B. Notifying any trustee, protector or other agent of any foreign trust or other
2 related entities of either the existence of this Order, or of the fact that repatriation is
3 required pursuant to a court order, until such time that all Defendants' Assets have been
4 fully repatriated pursuant to this Order.

5 **VIII. CONSUMER CREDIT REPORTS**

6 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports concerning
7 any Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C.
8 1681b(a)(1), and that, upon written request, any credit reporting agency from which such
9 reports are requested shall provide them to Plaintiff.

10 **IX. PRESERVATION OF RECORDS**

11 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
12 employees, and attorneys, and all other persons in active concert or participation with any
13 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
14 hereby temporarily restrained and enjoined from:

15 A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering,
16 transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents
17 that relate to: (1) the business, business practices, Assets, or business or personal finances
18 of any Defendant; (2) the business practices or finances of entities directly or indirectly
19 under the control of any Defendant; or (3) the business practices or finances of entities
20 directly or indirectly under common control with any other Defendant; and

21 B. Failing to create and maintain Documents that, in reasonable detail,
22 accurately, fairly, and completely reflect Defendants' incomes, disbursements,
23 transactions, and use of Defendants' Assets.

24 **X. PRESERVATION OF RECORDS BY THIRD PARTIES**

25 **IT IS FURTHER ORDERED** that any person who receives actual notice of this
26 Order (by service or otherwise) that has held, controlled, or maintained custody of any
27 Document on behalf of any Defendant that relates to the business or business practices of
28 any Defendant or of any directly or indirectly under the control of any Defendant are

1 hereby restrained and enjoined from destroying, erasing, falsifying, writing over,
2 mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner,
3 directly or indirectly, any such Documents.

4 **XI. REPORT OF NEW BUSINESS ACTIVITY**

5 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
6 employees, and attorneys, and all other persons in active concert or participation with any
7 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
8 hereby temporarily restrained and enjoined from creating, operating, or exercising any
9 control over any business entity, whether newly formed or previously inactive, including
10 any partnership, limited partnership, joint venture, sole proprietorship, or corporation,
11 without first providing Plaintiff's counsel and the Receiver with a written statement
12 disclosing: (1) the name of the business entity; (2) the address and telephone number of
13 the business entity; (3) the names of the business entity's officers, directors, principals,
14 managers, and employees; and (4) a detailed description of the business entity's intended
15 activities.

16 **XII. INTERNATIONAL TRAVEL RESTRICTIONS AND SURRENDER OF** 17 **PASSPORTS—WRIT *NE EXEAT***

18 **IT IS FURTHER ORDERED** that the FTC's motion for a writ *ne exeat republica*
19 as to James D. Noland is **denied**. As an initial matter, it is unclear whether such a writ is
20 available in this circumstance. The great majority of cases, including the jurisprudential
21 underpinning of the modern writ *ne exeat*, found authority to grant such a writ in 26 U.S.C.
22 § 7402. *See, e.g., United States v. Shaheen*, 445 F.2d 6, 9 n.4 (7th Cir. 1971). Title 26 is
23 the tax code—no analogue to § 7402 exists in Title 15, under which the FTC brings this
24 action. Although counsel for the FTC indicated the All Writs Act, 28 U.S.C. § 1651,
25 provides a basis for the requested writ in this case, the Court has not found any authority
26 relying on the All Writs Act to issue such a writ. *Shaheen* itself does not cite the All Writs
27 Act but relies entirely on § 7402.
28

Moreover, even if the Court had the authority to grant a writ *ne exeat republica*, it is not warranted in this case. A writ *ne exeat republica* is “an extraordinary writ” that requires a showing of “exceptional circumstances.” *Shaheen*, 445 F.2d at 10. The FTC has failed to show such circumstances here. The FTC seeks this writ against James Noland only. The materials submitted by the FTC suggest that Noland left the United States months ago and has been absent from the country for an extended period of time. (Doc. 8 at 51.) It is unclear how a writ designed to keep Noland in the country would be of any benefit now that Noland is out of the country. Also, although the FTC argues that the writ is necessary to prevent the movement of Noland’s assets out of the United States, it is unclear whether the addition of the writ (which may be beyond the Court’s powers) would actually further this goal in light of the other (broad) relief the Court is granting.

XIII. THIRD PARTY INTERNATIONAL TRAVEL PROVIDERS

IT IS FURTHER ORDERED that, in light of the Court’s decision on the writ *ne exeat republica*, the FTC’s request to enjoin common carriers from providing international travel to Noland is **denied**. The Court also notes that, even if it had granted the writ, it is not at all clear that it could practicably order common carriers to prevent Noland’s travels.

XIV. TAMPERING

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from, in the course of this proceeding:

- A. Using or attempting to use force, the threat of force, or payment to influence, delay, or prevent the testimony of any person;
- B. Causing or inducing, or attempting to cause or induce, any person to:
 - 1. withhold testimony, or withhold a Document or other object;
 - 2. alter, destroy, mutilate, or conceal any Document or other object with intent to impair the integrity or availability of the item;

- 1 3. evade legal process summoning that person to appear as a witness, or
2 to produce Document(s) or other object(s); or
3 4. be absent from an official proceeding to which that person has been
4 summoned by legal process.

5 **XV. TEMPORARY RECEIVER**

6 **IT IS FURTHER ORDERED** that attorney Kimberly Friday is appointed as
7 temporary receiver of the Receivership Entities with full powers of an equity receiver. The
8 Temporary Receiver shall be solely the agent of this Court in acting as Temporary Receiver
9 under this Order.

10 **XVI. DUTIES AND AUTHORITY OF THE TEMPORARY RECEIVER**

11 **IT IS FURTHER ORDERED** that the Temporary Receiver is directed and
12 authorized to accomplish the following:

13 A. Assume full control of Receivership Entities by removing, as the Temporary
14 Receiver deems necessary or advisable, any director, officer, independent contractor,
15 employee, attorney, or agent of any Receivership Entity from control of, management of,
16 or participation in, the affairs of the Receivership Entity;

17 B. Take exclusive custody, control, and possession of all Assets and Documents
18 of, or in the possession, custody, or under the control of, any Receivership Entity, wherever
19 situated;

20 C. Take exclusive custody, control, and possession of all Documents or Assets
21 associated with credits, debits, or charges made on behalf of any Receivership Entity,
22 wherever situated, including reserve funds held by payment processors, credit card
23 processors, merchant banks, acquiring banks, independent sales organizations, third party
24 processors, payment gateways, insurance companies, or other entities;

25 D. Conserve, hold, manage, and prevent the loss of all Assets of the
26 Receivership Entities, and perform all acts necessary or advisable to preserve the value of
27 those Assets. The Temporary Receiver shall assume control over the income and profits
28 therefrom and all sums of money now or hereafter due or owing to the Receivership

1 Entities. The Temporary Receiver shall have full power to sue for, collect, and receive, all
2 Assets of the Receivership Entities and of other persons or entities whose interests are now
3 under the direction, possession, custody, or control of, the Receivership Entities. Provided,
4 however, that the Temporary Receiver shall not attempt to collect any amount from a
5 consumer if the Temporary Receiver believes the consumer's debt to the Receivership
6 Entities has resulted from the deceptive acts or practices or other violations of law alleged
7 in the Complaint in this matter, without prior Court approval;

8 E. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the
9 Receivership Entities, and perform all acts necessary or advisable to preserve such
10 Documents. The Temporary Receiver shall: divert mail; preserve all Documents of the
11 Receivership Entities that are accessible via electronic means (such as online access to
12 financial accounts and access to electronic documents held onsite or by Electronic Data
13 Hosts, by changing usernames, passwords or other log-in credentials; take possession of
14 all electronic Documents of the Receivership Entities stored onsite or remotely; take
15 whatever steps necessary to preserve all such Documents; and obtain the assistance of the
16 FTC's Digital Forensic Unit, as the FTC may provide in its discretion, for the purpose of
17 obtaining electronic documents stored onsite or remotely.

18 F. Choose, engage, and employ attorneys, accountants, appraisers, and other
19 independent contractors and technical specialists, as the Temporary Receiver deems
20 advisable or necessary in the performance of duties and responsibilities under the authority
21 granted by this Order;

22 G. Make payments and disbursements from the receivership estate that are
23 necessary or advisable for carrying out the directions of, or exercising the authority granted
24 by, this Order, and to incur, or authorize the making of, such agreements as may be
25 necessary and advisable in discharging his or her duties as Temporary Receiver. The
26 Temporary Receiver shall apply to the Court for prior approval of any payment of any debt
27 or obligation incurred by the Receivership Entities prior to the date of entry of this Order,
28

1 except payments that the Temporary Receiver deems necessary or advisable to secure
2 Assets of the Receivership Entities, such as rental payments;

3 H. Take all steps necessary to secure and take exclusive custody of each location
4 from which the Receivership Entities operate their businesses. Such steps may include,
5 but are not limited to, any of the following, as the Temporary Receiver deems necessary or
6 advisable: (1) securing the location by changing the locks and alarm codes and
7 disconnecting any internet access or other means of access to the computers, servers,
8 internal networks, or other records maintained at that location; and (2) requiring any
9 persons present at the location to leave the premises, to provide the Temporary Receiver
10 with proof of identification, and/or to demonstrate to the satisfaction of the Temporary
11 Receiver that such persons are not removing from the premises Documents or Assets of
12 the Receivership Entities. Law enforcement personnel, including, but not limited to, police
13 or sheriffs, may assist the Temporary Receiver in implementing these provisions in order
14 to keep the peace and maintain security. If requested by the Temporary Receiver, the
15 United States Marshal will provide appropriate and necessary assistance to the Temporary
16 Receiver to implement this Order and is authorized to use any necessary and reasonable
17 force to do so;

18 I. Take all steps necessary to prevent the modification, destruction, or erasure
19 of any web page or website registered to and operated, in whole or in part, by any
20 Defendants, and to provide access to all such web page or websites to Plaintiff's
21 representatives, agents, and assistants, as well as Defendants and their representatives;

22 J. Enter into and cancel contracts and purchase insurance as advisable or
23 necessary;

24 K. Prevent the inequitable distribution of Assets and determine, adjust, and
25 protect the interests of consumers who have transacted business with the Receivership
26 Entities;

1 L. Make an accounting, as soon as practicable, of the Assets and financial
2 condition of the receivership and file the accounting with the Court and deliver copies
3 thereof to all parties;

4 M. Institute, compromise, adjust, appear in, intervene in, defend, dispose of,
5 accept or direct service of process for, or otherwise become party to any legal action in
6 state, federal or foreign courts or arbitration proceedings as the Temporary Receiver deems
7 necessary and advisable to preserve or recover the Assets of the Receivership Entities, or
8 to carry out the Temporary Receiver's mandate under this Order, including but not limited
9 to, actions challenging fraudulent or voidable transfers;

10 N. Issue subpoenas to obtain Documents and records pertaining to the
11 Receivership, and conduct discovery in this action on behalf of the receivership estate, in
12 addition to obtaining other discovery as set forth in this Order;

13 O. Open one or more bank accounts at designated depositories for funds of the
14 Receivership Entities. The Temporary Receiver shall deposit all funds of the Receivership
15 Entities in such designated accounts and shall make all payments and disbursements from
16 the receivership estate from such accounts. The Temporary Receiver shall serve copies of
17 monthly account statements on all parties;

18 P. Maintain accurate records of all receipts and expenditures incurred as
19 Temporary Receiver;

20 Q. Allow the Plaintiffs' representatives, agents, and assistants, as well as
21 Defendants' representatives and Defendants themselves, reasonable access to the premises
22 of the Receivership Entities, or any other premises where the Receivership Entities conduct
23 business. The purpose of this access shall be to inspect and copy any and all books, records,
24 Documents, accounts, and other property owned by, or in the possession of, the
25 Receivership Entities or their agents. The Temporary Receiver shall have the discretion to
26 determine the time, manner, and reasonable conditions of such access;

1 R. Allow the Plaintiffs' representatives, agents, and assistants, as well as
2 Defendants and their representatives reasonable access to all Documents in the possession,
3 custody, or control of the Receivership Entities;

4 S. Cooperate with reasonable requests for information or assistance from any
5 state or federal civil or criminal law enforcement agency;

6 T. Suspend business operations of the Receivership Entities if in the judgment
7 of the Temporary Receiver such operations cannot be continued legally and profitably;

8 U. If the Temporary Receiver identifies a nonparty entity as a Receivership
9 Entity, promptly notify the entity as well as the parties, and inform the entity that it can
10 challenge the Temporary Receiver's determination by filing a motion with the Court.
11 Provided, however, that the Temporary Receiver may delay providing such notice until the
12 Temporary Receiver has established control of the nonparty entity and its assets and
13 records, if the Temporary Receiver determines that notice to the entity or the parties before
14 the Temporary Receiver establishes control over the entity may result in the destruction of
15 records, dissipation of assets, or any other obstruction of the Temporary Receiver's control
16 of the entity; and

17 V. If in the Temporary Receiver's judgment the business operations cannot be
18 continued legally and profitably, take all steps necessary to ensure that any of the
19 Receivership Entities' web pages or websites relating to the activities alleged in the
20 Complaint cannot be accessed by the public, or are modified for consumer education and/or
21 informational purposes, and take all steps necessary to ensure that any telephone numbers
22 associated with the Receivership Entities cannot be accessed by the public, or are answered
23 solely to provide consumer education or information regarding the status of operations.

24 W. Prepare a written report at or before any hearing described in Section XXIX,
25 that describes (1) the steps taken by the Receiver to implement the terms of the Order; (2)
26 the value of all assets and sum of all liabilities of the Receivership Entities; (3) the steps
27 the Receiver intends to take in the future to protect receivership assets, recover receivership
28 assets from third parties, and adjust receivership liabilities; (4) the Receiver's opinion on

1 whether any portion of the business of any of the Receivership Entities can continue to
2 operate legally and profitably; and (5) any other matters which the Receiver believes should
3 be brought to the Court's attention.

4 **XVII. TRANSFER OF RECEIVERSHIP PROPERTY TO THE TEMPORARY**
5 **RECEIVER**

6 **IT IS FURTHER ORDERED** that Defendants and any other person, with
7 possession, custody or control of property of, or records relating to, the Receivership
8 Entities shall, upon notice of this Order by personal service or otherwise, fully cooperate
9 with and assist the Temporary Receiver in taking and maintaining possession, custody, and
10 control of the Assets and Documents of the Receivership Entities and immediately transfer
11 or deliver to the Temporary Receiver possession, custody, and control of, the following:

12 A. All Assets held by or for the benefit of the Receivership Entities;

13 B. All Documents or Assets associated with credits, debits, or charges made on
14 behalf of any Receivership Entity, wherever situated, including reserve funds held by
15 payment processors, credit card processors, merchant banks, acquiring banks, independent
16 sales organizations, third party processors, payment gateways, insurance companies, or
17 other entities;

18 C. All Documents of or pertaining to the Receivership Entities, including all
19 communications occurring via electronic mail, electronic messaging service, or
20 encrypted messaging service (including Silent Circle or WhatsApp);

21 D. All computers, electronic devices, mobile devices, and machines used to
22 conduct the business of the Receivership Entities, even if such computers, electronic
23 devices, mobile devices, and machines are also used for non-business purposes;

24 E. All Assets and Documents belonging to other persons or entities whose
25 interests are under the direction, possession, custody, or control of the Receivership
26 Entities; and

27 F. All keys, codes, user names and passwords necessary to gain or to secure
28 access to any Assets or Documents of or pertaining to the Receivership Entities, including

1 access to their business premises, means of communication, accounts, computer systems
2 (onsite and remote), Electronic Data Hosts, encrypted messaging services (including Silent
3 Circle and WhatsApp), or other property.

4 In the event that any person or entity fails to deliver or transfer any Asset or
5 Document, or otherwise fails to comply with any provision of this Section, the Temporary
6 Receiver may file an Affidavit of Non-Compliance regarding the failure and a motion
7 seeking compliance or a contempt citation.

8 **XVIII. PROVISION OF INFORMATION TO THE TEMPORARY**
9 **RECEIVER**

10 **IT IS FURTHER ORDERED** that Defendants shall immediately provide to the
11 Temporary Receiver:

12 A. A list of all Assets and accounts of the Receivership Entities that are held in
13 any name other than the name of a Receivership Entity, or by any person or entity other
14 than a Receivership Entity;

15 B. A list of all agents, employees, officers, attorneys, servants and those persons
16 in active concert and participation with the Receivership Entities, or who have been
17 associated or done business with the Receivership Entities; and

18 C. A description of any documents covered by attorney-client privilege or
19 attorney work product, including files where such documents are likely to be located,
20 authors or recipients of such documents, and search terms likely to identify such electronic
21 documents.

22 **XIX. COOPERATION WITH THE TEMPORARY RECEIVER**

23 **IT IS FURTHER ORDERED** that Defendants; Receivership Entities; Defendants'
24 or Receivership Entities' officers, agents, employees, and attorneys, all other persons in
25 active concert or participation with any of them, and any other person with possession,
26 custody, or control of property of or records relating to the Receivership entities who
27 receive actual notice of this Order shall fully cooperate with and assist the Temporary
28 Receiver. This cooperation and assistance shall include, but is not limited to, providing

1 information to the Temporary Receiver that the Temporary Receiver deems necessary to
2 exercise the authority and discharge the responsibilities of the Temporary Receiver under
3 this Order; providing any keys, codes, user names and passwords required to access any
4 computers, electronic devices, mobile devices, and machines (onsite or remotely) and any
5 cloud account (including the specific methods to access that account) or electronic file in
6 any medium; advising all persons who owe money to any Receivership Entity that all debts
7 should be paid directly to the Temporary Receiver; and transferring funds at the Temporary
8 Receiver's direction and producing records related to the Assets and sales of the
9 Receivership Entities.

10 **XX. NON-INTERFERENCE WITH THE TEMPORARY RECEIVER**

11 **IT IS FURTHER ORDERED** that Defendants; Receivership Entities; Defendants'
12 or Receivership Entities' officers, agents, employees, attorneys, and all other persons in
13 active concert or participation with any of them, who receive actual notice of this Order,
14 and any other person served with a copy of this Order, are hereby restrained and enjoined
15 from directly or indirectly:

16 A. Interfering with the Temporary Receiver's efforts to manage, or take
17 custody, control, or possession of, the Assets or Documents subject to the receivership;

18 B. Transacting any of the business of the Receivership Entities;

19 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
20 liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession
21 or custody of, or in which an interest is held or claimed by, the Receivership Entities; or

22 D. Refusing to cooperate with the Temporary Receiver or the Temporary
23 Receiver's duly authorized agents in the exercise of their duties or authority under any
24 order of this Court.

25 **XXI. STAY OF ACTIONS**

26 **IT IS FURTHER ORDERED** that, except by leave of this Court, during the
27 pendency of the receivership ordered herein, Defendants, Defendants' officers, agents,
28 employees, attorneys, and all other persons in active concert or participation with any of

1 them, who receive actual notice of this Order, and their corporations, subsidiaries,
2 divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and
3 other persons seeking to establish or enforce any claim, right, or interest against or on
4 behalf of Defendants, and all others acting for or on behalf of such persons, are hereby
5 enjoined from taking action that would interfere with the exclusive jurisdiction of this
6 Court over the Assets or Documents of the Receivership Entities, including, but not limited
7 to:

8 A. Filing or assisting in the filing of a petition for relief under the Bankruptcy
9 Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the
10 Receivership Entities;

11 B. Commencing, prosecuting, or continuing a judicial, administrative, or other
12 action or proceeding against the Receivership Entities, including the issuance or
13 employment of process against the Receivership Entities, except that such actions may be
14 commenced if necessary to toll any applicable statute of limitations; or

15 C. Filing or enforcing any lien on any asset of the Receivership Entities, taking
16 or attempting to take possession, custody, or control of any Asset of the Receivership
17 Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of
18 the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of
19 self-help, or otherwise;

20 Provided, however, that this Order does not stay: (1) the commencement or
21 continuation of a criminal action or proceeding; (2) the commencement or continuation of
22 an action or proceeding by a governmental unit to enforce such governmental unit's police
23 or regulatory power; or (3) the enforcement of a judgment, other than a money judgment,
24 obtained in an action or proceeding by a governmental unit to enforce such governmental
25 unit's police or regulatory power.

26 **XXII. COMPENSATION OF THE TEMPORARY RECEIVER**

27 **IT IS FURTHER ORDERED** that the Temporary Receiver and all personnel hired
28 by the Temporary Receiver as herein authorized, including counsel to the Temporary

1 Receiver and accountants, are entitled to reasonable compensation for the performance of
2 duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by
3 them, from the Assets now held by, in the possession or control of, or which may be
4 received by, the Receivership Entities. The Temporary Receiver shall file with the Court
5 and serve on the parties periodic requests for the payment of such reasonable
6 compensation, with the first such request filed no more than 60 days after the date of entry
7 of this Order. The Temporary Receiver shall not increase the hourly rates used as the bases
8 for such fee applications without prior approval of the Court.

9 **XXIII. TEMPORARY RECEIVER'S BOND**

10 **IT IS FURTHER ORDERED** that the Receiver is not required to file with the
11 Clerk of this Court a bond until further order of the Court, conditioned that the Receiver
12 will well and truly perform the duties of the office and abide by and perform all acts the
13 Court directs.

14 **XXIV. IMMEDIATE ACCESS TO BUSINESS PREMISES AND RECORDS**

15 **IT IS FURTHER ORDERED** that:

16 A. In order to allow Plaintiff and the Temporary Receiver to preserve Assets
17 and evidence relevant to this action and to expedite discovery, Plaintiff and the Temporary
18 Receiver, and their representatives, agents, contractors, and assistants, shall have
19 immediate access to the business premises and storage facilities, owned, controlled, or used
20 by the Receivership Entities. Such locations include, but are not limited to, 4465 W Sunset
21 Rd, Las Vegas, NV 89118, 2875 St Rose Pkwy Henderson, NV 89052, 18 E Broadway,
22 Winchester, KY 40391 and any offsite location, commercial mailbox, or storage facility
23 used by the Receivership Entities. The Temporary Receiver may exclude Defendants,
24 Receivership Entities, and their employees from the business premises during the
25 immediate access and subsequently at the Temporary Receiver's discretion.

26 B. Plaintiff and the Temporary Receiver, and their representatives, agents,
27 contractors, and assistants, are authorized to remove Documents from the Receivership
28 Entities' premises in order that they may be inspected, inventoried, and copied. Plaintiff

1 shall return any removed materials to the Temporary Receiver within 5 business days of
2 completing inventorying and copying, or such time as is agreed upon by Plaintiff and the
3 Temporary Receiver;

4 C. Plaintiff's access to the Receivership Entities' documents pursuant to this
5 Section shall not provide grounds for any Defendant to object to any subsequent request
6 for documents served by Plaintiff;

7 D. Plaintiff and the Temporary Receiver, and their representatives, agents,
8 contractors, and assistants, are authorized to obtain the assistance of federal, state and local
9 law enforcement officers as they deem necessary to effect service and to implement
10 peacefully the provisions of this Order;

11 E. If any Documents, computers, or electronic storage devices containing
12 information related to the business practices or finances of the Receivership Entities are at
13 a location other than those listed herein, including personal residence(s) of any Defendant,
14 then, immediately upon receiving notice of this order, Defendants and Receivership
15 Entities shall produce to the Temporary Receiver all such Documents, computers, and
16 electronic storage devices, along with any codes or passwords needed for access. In order
17 to prevent the destruction of computer data, upon service of this Order, any such computers
18 or electronic storage devices shall be powered down in the normal course of the operating
19 system used on such devices and shall not be powered up or used until produced for
20 copying and inspection; and

21 F. If any communications or records of any Receivership Entity are stored with
22 an Electronic Data Host, such entity shall, immediately upon receiving notice of this Order,
23 provide the Temporary Receiver with the username, passwords, and any other login
24 credential needed to access the communications and records, and shall not attempt to
25 access, or cause a third-party to attempt to access, the communications or records.

26 **XXV. DISTRIBUTION OF ORDER BY DEFENDANTS**

27 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy
28 of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign,

1 member, officer, director, employee, agent, independent contractor, client, attorney,
2 spouse, subsidiary, division, and representative of any Defendant, and shall, within 10 days
3 from the date of entry of this Order provide Plaintiff and the Temporary Receiver with a
4 sworn statement whether this provision of the Order has been satisfied, which statement
5 shall include the names, physical addresses, phone number, and email addresses of each
6 such person or entity who received a copy of the Order. Furthermore, Defendants shall not
7 take any action that would encourage any person who should receive a copy of this Order
8 or any other persons or entities in active concert or participation with them to disregard this
9 Order or believe that they are not bound by its provisions.

10 **XXVI. EXPEDITED DISCOVERY**

11 **IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R.
12 Civ. P. 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Fed. R. Civ. P. 30(a), 33, 34, and
13 45, Plaintiff and the Temporary Receiver are granted leave, at any time after service of this
14 Order, to conduct limited expedited discovery for the purpose of discovering: (1) the
15 nature, location, status, and extent of Defendants' Assets³; (2) the nature, location, and
16 extent of Defendants' business transactions and operations; (3) Documents reflecting
17 Defendants' business transactions and operations; or (4) compliance with this Order. The
18 limited expedited discovery set forth in this Section shall proceed as follows:

19 A. Plaintiff and the Temporary Receiver may take the deposition of parties and
20 non-parties. Forty-eight (48) hours' notice shall be sufficient notice for such depositions.
21 The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal
22 Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply
23 to depositions taken pursuant to this Section. Any such deposition taken pursuant to this
24 Section shall not be counted towards the deposition limit set forth in Rules 30(a)(2)(A) and
25 31(a)(2)(A) and depositions may be taken by telephone or other remote electronic means;

26
27
28 ³ For the reasons set forth in footnote 2, *supra*, Thomas G. Sacca, Jr. is excluded from
this requirement. He remains subject to the remaining requirements of this section.

1 B. Plaintiff and the Temporary Receiver may serve upon parties requests for
2 production of Documents or inspection that require production or inspection within 5 days
3 of service, provided, however, that 3 days of notice shall be deemed sufficient for the
4 production of any such Documents that are maintained or stored only in an electronic
5 format.

6 C. Plaintiff and the Temporary Receiver may serve upon parties interrogatories
7 that require response within 5 days after Plaintiff serves such interrogatories;

8 D. The Plaintiff and the Temporary Receiver may serve subpoenas upon non-
9 parties that direct production or inspection within 5 days of service.

10 E. Service of discovery upon a party to this action, taken pursuant to this
11 Section, shall be sufficient if made by facsimile, email, or by overnight delivery.

12 F. Any expedited discovery taken pursuant to this Section is in addition to, and
13 is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure
14 and the Local Rules of this Court. The expedited discovery permitted by this Section does
15 not require a meeting or conference of the parties, pursuant to Rules 26(d) & (f) of the
16 Federal Rules of Civil Procedure.

17 G. The parties are exempted from making initial disclosures under Fed. R. Civ.
18 P. 26(a)(1) until further order of this Court.

19 **XXVII. SERVICE OF THIS ORDER**

20 **IT IS FURTHER ORDERED** that copies of this Order as well as the Motion for
21 Temporary Restraining Order and all other pleadings, Documents, and exhibits filed
22 contemporaneously with that Motion (other than the complaint and summons), may be
23 served by any means, including facsimile transmission, electronic mail or other electronic
24 messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and employees
25 of Plaintiff, by any law enforcement agency, or by private process server, upon any
26 Defendant or any person (including any financial institution) that may have possession,
27 custody or control of any Asset or Document of any Defendant, or that may be subject to
28 any provision of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil

1 Procedure. For purposes of this Section, service upon any branch, subsidiary, affiliate, or
2 office of any entity shall effect service upon the entire entity.

3 **XXVIII. CORRESPONDENCE AND SERVICE ON PLAINTIFF**

4 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all
5 correspondence and service of pleadings on Plaintiff shall be addressed to:

6 Jonathan W. Ware, Esq.

7 Federal Trade Commission

8 Bureau of Consumer Protection | Enforcement Division

9 600 Pennsylvania Avenue, NW, CC-9528

10 Washington, DC 20580

11 T +1 202 326 2726

12 F +1 202 326 3197

13 jware1@ftc.gov

14 **XXIX. PRELIMINARY INJUNCTION HEARING**

15 **IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 65(b), the parties
16 shall appear before this Court in Courtroom 601, Sandra Day O'Connor United States
17 Courthouse, 401 W. Washington Street, Phoenix, Arizona 85003, on January 27, 2020, at
18 9:30 a.m. (Arizona time) for a hearing to show cause, if there is any, why this Court should
19 not enter a preliminary injunction, pending final ruling on the Complaint against
20 Defendants, enjoining the violations of the law alleged in the Complaint, continuing the
21 freeze of their Assets, continuing the receivership, and imposing such additional relief as
22 may be appropriate.

23 **XXX. BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY**
24 **INJUNCTION**

25 **IT IS FURTHER ORDERED** that:

26 A. Defendants shall file with the Court and serve on Plaintiff's counsel any
27 answering pleadings, affidavits, motions, expert reports or declarations, or legal
28 memoranda no later than 4 days prior to the order to show cause hearing scheduled pursuant

1 to this Order. Plaintiff may file responsive or supplemental pleadings, materials, affidavits,
2 or memoranda with the Court and serve the same on counsel for Defendants no later than
3 1 day prior to the order to show cause hearing. Provided that such affidavits, pleadings,
4 motions, expert reports, declarations, legal memoranda or oppositions must be served by
5 personal or overnight delivery, facsimile, or email, and be received by the other party or
6 parties no later than 5:00 p.m. (Arizona time) on the appropriate dates set forth in this
7 Section.

8 B. An evidentiary hearing on Plaintiff's request for a preliminary injunction is
9 not necessary unless Defendants demonstrate that they have, and intend to introduce,
10 evidence that raises a genuine and material factual issue. The question of whether this
11 Court should enter a preliminary injunction shall be resolved on the pleadings, declarations,
12 exhibits, and memoranda filed by, and oral argument of, the parties. Live testimony shall
13 be heard only on further order of this Court. Any motion to permit such testimony shall be
14 filed with the Court and served on counsel for the other parties at least 5 days prior to the
15 preliminary injunction hearing in this matter. Such motion shall set forth the name,
16 address, and telephone number of each proposed witness, a detailed summary or affidavit
17 revealing the substance of each proposed witness's expected testimony, and an explanation
18 of why the taking of live testimony would be helpful to this Court. Any papers opposing
19 a timely motion to present live testimony or to present live testimony in response to another
20 party's timely motion to present live testimony shall be filed with this Court and served on
21 the other parties at least 3 days prior to the order to show cause hearing.

22 Provided, however, that this service shall be performed by personal or overnight
23 delivery, facsimile or email, and Documents shall be delivered so that they shall be
24 received by the other parties no later than 5:00 p.m. (Arizona time) on the appropriate dates
25 provided in this Section.

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